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7 ORLANDO GARCIA,  
8 Plaintiff,  
9 v.  
10 JERRY BODDUM, et al.,  
11 Defendants.

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13 Case No. 21-cv-04926-PJH

14  
15 **ORDER GRANTING MOTION FOR**  
**DEFAULT JUDGMENT**

16 Re: Dkt. No. 17

17  
18 Before the court is plaintiff's motion for default judgment. Dkt. 17. The matter is  
fully briefed and suitable for decision without oral argument. Accordingly, the hearing set  
for January 27, 2022 is VACATED. Having read the papers and carefully considered  
their arguments and the relevant legal authority, and good cause appearing, the court  
hereby GRANTS for the following reasons.

19 **I. BACKGROUND**

20 Plaintiff filed this action on June 28, 2021, alleging violations of the Americans with  
21 Disabilities Act ("ADA") and California's Unruh Civil Rights Act ("Unruh Act"). Dkt. 1 at 5–  
22 7. Plaintiff is an individual with cerebral palsy who uses a wheelchair for mobility. *Id.* at  
23 1. Plaintiff alleges that structural barriers denied him meaningful access to the real  
24 property located at 4917 Telegraph Ave, Oakland, California ("Tattoo 13"), owned by  
25 Jerry Boddum and Mary Ann Boddum ("defendants"). *Id.* at ¶¶ 11–14. Specifically,  
26 plaintiff alleges defendants failed to provide wheelchair accessible paths to the property  
27 and failed to provide accessible door hardware. *Id.* at ¶¶ 12, 15.

28 Defendants were served with the summons and complaint on July 20, 2021 and

1 August 12, 2021. Dkt. 10–11. Defendants did not respond. Plaintiff moved for an entry  
2 of default on October 20, 2021, which the clerk entered against each defendant on  
3 October 22, 2021. Dkt. 13–16. Plaintiff moved for default judgment on December 16,  
4 2021, and defendants were served the motion on the same day. Dkt. 17, 17-13.

5 **II. DISCUSSION**

6 **A. Jurisdiction and Service of Process**

7 **1. Subject Matter Jurisdiction and Personal Jurisdiction**

8 A court has a duty to examine both subject matter and personal jurisdiction when  
9 default judgment is sought against a non-appearing party. In re Tuli, 172 F.3d 707, 712  
10 (9th Cir. 1999).

11 The court has subject-matter jurisdiction over plaintiff's ADA claim because it  
12 arises under federal law, see 28 U.S.C. § 1331, and supplemental jurisdiction over  
13 plaintiff's Unruh Act claim because it shares a common nucleus of operative fact with the  
14 ADA claim, see 28 U.S.C. § 1337(a). The court also has personal jurisdiction over  
15 defendants because they own the California real property at issue in this action, Tattoo  
16 13. Dkt. 17-7. And public records suggest defendants reside in California, thereby  
17 subjecting them to general personal jurisdiction in this court. Id.

18 **2. Service of Process**

19 A court must also assess whether the defendant against whom default judgment is  
20 sought was properly served with notice of the action. See Penpower Tech. Ltd. v. S.P.C.  
21 Tech., 627 F. Supp. 2d 1083, 1088 (N.D. Cal. 2008). Here, defendants were personally  
22 served, and thus had notice. Dkt. 10, 11.

23 **B. Default Judgment**

24 After entry of default, a court may grant default judgment on the merits of the case.  
25 Fed. R. Civ. P. 55. "The district court's decision whether to enter a default judgment is a  
26 discretionary one," Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980), guided by the  
27 following factors:

28 (1) the possibility of prejudice to the plaintiff[;] (2) the merits of

1 plaintiff's substantive claim[;] (3) the sufficiency of the  
2 complaint[;] (4) the sum of money at stake in the action; (5) the  
3 possibility of a dispute concerning material facts; (6) whether  
the default was due to excusable neglect[;] and (7) the strong  
policy underlying the Federal Rules of Civil Procedure favoring  
decisions on the merits.

4 Eitel v. McCool, 782 F.2d 1470, 1471–72 (9th Cir. 1986).

5 Here, the Eitel factors weigh in favor of granting default judgment.

6 **1. Possibility of Prejudice to Plaintiff**

7 The first factor considers whether the plaintiff will suffer prejudice. Here, because  
8 defendants did not respond to plaintiff's complaint, plaintiff's only recourse is a default  
9 judgment. Thus, this factor weighs in favor of default judgment.

10 **2. Merits of Plaintiff's Claims & Sufficiency of Complaint**

11 The second and third factors, "often analyzed together," require the plaintiff "to  
12 plead facts sufficient to establish and succeed upon its claims." Dr. JKL Ltd. v. HPC IT  
13 Educ. Ctr., 749 F. Supp. 2d 1038, 1048 (N.D. Cal. 2010). After entry of default, the  
14 factual allegations in the complaint related to liability are accepted as true and deemed  
15 admitted. Fair Hous. of Marin v. Combs, 285 F.3d 899, 906 (9th Cir. 2002). "The district  
16 court is not required to make detailed findings of fact." Id.

17 Plaintiff seeks default judgment on his ADA and Unruh Act claims. To prevail on a  
18 Title III discrimination claim, "the plaintiff must show that (1) she is disabled within the  
19 meaning of the ADA; (2) the defendant is a private entity that owns, leases, or operates a  
20 place of public accommodation; and (3) the plaintiff was denied public accommodations  
21 by the defendant because of her disability." Molski v. M.J. Cable, Inc., 481 F.3d 724, 730  
22 (9th Cir. 2007). "California's Unruh Civil Rights Act operates virtually identically to the  
23 ADA." Id. at 731.

24 Plaintiff has satisfied the elements of these claims. First, plaintiff has shown he is  
25 disabled under the ADA. Under the ADA, a physical impairment that substantially affects  
26 a major life activity, such as walking, qualifies as a disability. 42 U.S.C. §§ 12102(1)(A),  
27 12102(2)(A). Plaintiff uses a wheelchair for mobility. Accordingly, plaintiff has a physical  
28 impairment that substantially affects a major life activity. Second, plaintiff has shown that

1 defendants own a public accommodation. Defendants' tattoo parlor is a service  
2 establishment, which meets the definition of a "public accommodation." 42 U.S.C. §  
3 12181(7)(F). Third, plaintiff has shown that he was denied access to a public  
4 accommodation due to his disability because Tattoo 13 failed to have a wheelchair path  
5 or doors with accessible hardware.

6 Accordingly, plaintiff's ADA and Unruh Act claims satisfy the second and third Eitel  
7 factors.

8 **3. Money at Stake**

9 The fourth factor considers the amount of money at stake in relation to the  
10 seriousness of the defendant's conduct. Eitel, 782 F.2d at 1471–72. The sum of money  
11 at stake is not substantial here. Plaintiff seeks to recover a total of \$10,822.00 in awards  
12 (\$4,000.00 in statutory damages per defendant and \$2,882.00 in attorneys' fees and  
13 costs). Thus, the sum of money at stake is appropriate and weighs in favor of granting  
14 default judgment.

15 **4. Possibility of a Dispute Concerning Material Facts**

16 The fifth factor considers the possibility of a dispute of material fact. Id. But there  
17 is no indication that the material facts are in dispute, and the well-pleaded allegations in  
18 the complaint as to liability are deemed admitted. Geddes v. United Fin. Grp., 559 F.2d  
19 557, 560 (9th Cir. 1977). Thus, this factor weighs in favor of default judgment.

20 **5. Excusable Neglect**

21 "This factor favors default judgment where the defendant has been properly  
22 served or the plaintiff demonstrates that the defendant is aware of the lawsuit."  
23 Wecosign, Inc. v. IFG Holdings, Inc., 845 F. Supp. 2d 1072, 1082 (C.D. Cal. 2012).  
24 Defendants were served with the summons and complaint on July 20, 2021 and August  
25 12, 2021. Plaintiff notified defendants of the entry of default on October 20, 2021, and  
26 defendants were served this motion on December 16, 2021. As such, defendants were  
27 made aware of this suit, making this factor weigh in favor of default judgment.

28 **6. Strong Policy Favoring Decisions on the Merits**

1       “Cases should be decided upon their merits whenever reasonably possible.” Eitel,  
2 782 F.2d at 1472. But defendants’ failure to respond to plaintiff “makes a decision on the  
3 merits impractical, if not impossible.” PepsiCo, Inc. v. Cal. Sec. Cans, 238 F. Supp. 2d  
4 1172, 1177 (C.D. Cal. 2002). Accordingly, this factor weighs in favor of granting default  
5 judgment.

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7       In sum, all seven Eitel factors weigh in favor of granting default judgment.

8 **III. CONCLUSION**

9       For the foregoing reasons, IT IS ORDERED THAT:

- 10      1. Plaintiff’s motion for default judgment is GRANTED; and  
11      2. Plaintiff is granted injunctive and monetary relief, as is detailed in the  
12 corresponding judgment.

13 **IT IS SO ORDERED.**

14 Dated: January 21, 2022

15 /s/ Phyllis J. Hamilton

16 PHYLLIS J. HAMILTON  
17 United States District Judge